



**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, SAVANUR.**

PRESENT : **Sri. SRINIVASA. S. N.**
B.A., LL.M.,
Civil Judge and JMFC.,
Savanur.

O.S.NO.138/2024

Dated, this day of 4th December, 2025

Plaintiff : Shamshuddin S/o Latipoddin Peerjade

V/s

Defendants: Shabbir Najeerahammad Kundur & others

PARTIES IN IA-III

**Applicants/
Defendants
No.11 to 16:** Shabbir Najeerahammad Kundur & others

V/S

**Respondent/
Plaintiff:** Shamshuddin S/o Latipoddin Peerjade

i	Provision under which the application is filed	U/O 7 Rule 11 (a) and (d) r/w 151 of CPC
ii	Relief sought for	For the rejection of plaint as there is no cause of action and suit is barred by law.
iii	The date on which the application is filed	30-10-2024



iv	The date on which the objections are filed by different opponents	30-01-2025
v	The date on which the orders were passed on the said application	04-12-2025

ORDERS ON I.A.NO.III

The present application I.A.No.III has been filed by the defendant no.11 to 16 Under Order 7 rule 11 (a) and (d) R/w Sec.151 of CPC seeking for the rejection of plaint as there is no cause of action and suit is barred by law.

2.a) The defendant no.14 has sworn to in an affidavit accompanying with IA No.III, wherein he stated that the plaintiff has filed this suit seeking for the relief of permanent injunction. The plaintiff is not in possession of the suit property and he never fund in possession of the same as on the date of filing of suit or any date prior to filing of this suit. It is stated that, the grandfather of Defendants No.11 to 13, father of Defendants No. 14 to 16 viz., Shivarudrayya S/o Gadigeyya Kalmath purchased the property Paradi No.64/7 and 22/9, the then Savanur TMC No. 126 & 127 from its previous owner 1) Gadigeppa 2) Veerappa 3) Jagadevappa S/o Kotrappa Shetter under sale Deed dated:



30/06/1972 for a valuable consideration of Rs.10,000/-. The said Sale Deed registered in the Office of the Sub-Registrar, Savanur under document No.282/1972-73. The said property TMC No. 126 & 127 situated at ward No.3 Block No.5 of Savanur Town which refers to Paradi No.22.

b) It is further stated that, the father of the Defendant No.14 to 16 i.e., Shivarudrayya S/o Gadigeyya Kalmath purchased the property under Sale Deed showing 3 parts in the same Sale Deed. On the basis of the Sale Deed dated 30/06/1972, the name of Shivarudrayya appeared in the property register maintained by the TMC, Savanur as owner in possession of the property Paradi No. 64/7 and 22/9 old TMC No.126 & 127. Accordingly Shivarudrayya continued in possession and enjoyment of the property by paying Tax to the TMC, Savanur. Thereafter the father of the Defendants No.14 to 16 Shivarudrayya obtained license/permission from the chief Officer, TMC, Savanur on 23/11/1996 for construction of compound, house in the property.

c) Thereafter, the father of the Defendants No.14 to 16 Shivarudrayya sold some portion of the property in favour of Defendant No.9 Manjunath Paramashetty and Defendant No.10 Siddappa Paramashetty for a valuable consideration of



Rs.3,20,000/- under Sale Deed dated 23/12/2010 and retained 1031.4140sq.mtrs. Accordingly the Defendants Nos 9 & 10 are in possession of the portion of the property out of measuring 24 guntas. The Defendants No.9 & 10 have taken license/ permission from Chief Officer TMC, Savanur on 26/07/2011 for construction of building. All these facts are within the knowledge of the Plaintiff and said facts pleaded in O.S.No.130/2013 on the file of this Hon'ble Court. The said facts are suppressed by the Plaintiff.

d) It is submitted that, the father of the Defendant No.21 Thammanna S/o Rayappa Ganiger purchased old TMC property No.1409 Paradi No.64/6 and 22/8 under Sale Deed dated: 23/02/1948 for a valuable consideration. The Defendant No.21 Suresha purchased old property bearing TMC No.122 and 122/1 under Sale Deed dated 16/07/1979. Similarly, the Defendant No.18 Shivalingappa & Defendant No.20 Vinod Kumar purchased TMC property No.122 and 122/1 situated at Ward No. III, Block No.5 situated at Savanur Town with specific boundaries and measurements. All these Sale Deeds are holds good and appreciated by the Hon'ble Court in O.S.No.130/2013, O.S.No.105/1991 on the file of Hon'ble Civil Judge, Savanur and R.A.No. 128/2005 on the file of FTC/ District Court, Haveri. It is



submitted that, all these Sale Deeds are not challenged by the Plaintiff. Hence, the suit filed by the Plaintiff is not maintainable either in law or on facts of the case. On this ground the suit is liable to be dismissed.

e) It is submitted that, the father of the Defendants No.14 to 16-Shivarudrayya Kalmath purchased the property measuring gunta under Paradi No.22 old TMC No.126 & 127 under Sale Deed dated 30/06/1972. In view of the alienation of the portion of the property, Shivarudrayya Kalmath retained property measuring 1031.4140 sq.mtrs. (10.19 gunta) situated at ward No. III, Block No.5 of Savanur Town. All these facts are pleaded by the Defendants Nos.11 to 16 in O.S.No.130/2013 on the file of Hon'ble Civil Judge & JMFC, Savanur and O.S.No.105/1991 on the file of Civil Judge, Savanur. All these facts are suppressed by the Plaintiffs. On this ground alone the suit is liable to be dismissed. The name of the Defendant No.11 to 16 appeared in the E-Swathu under No.5-106-32B maintained by the TMC, Savanur as owner of the property measuring 1031.4140sq.mtrs. (10.19 gunta).

f) It is submitted that, thereafter the plaintiff – Shamsuddin filed O.S.No.224/1994 on the file of Civil Judge & JMFC, Savanur



against Shivarudrayya for the relief of injunction in respect of same property bearing Paradi No.66/1+2 New No. 66/1+2 /B measuring 24 gunta. After recording the evidence of the parties Hon'ble Civil Judge & JMFC dismissed O.S.No.224/1994 on 04/03/2014. While disposing the matter Hon'ble Court answered Issue No. 1, 2 in the negative holding that, the plaintiff is not in possession of the suit property and failed to prove the description, location of the property. Similarly, the Issue No.3 & 4 held in the negative holding that, there is no interference and there is no cause of action for the suit. While adducing evidence in O.S.No. 224/1994, the Plaintiff – Shamsuddin clearly admitted that, the Defendant Shivarudrayya purchased the property TMC No. 126 and 127. The Plaintiff has not challenged the legality of Judgment and Decree passed in O.S.No.224/1994 dated 04/03/2014. Hence, the Judgment and findings in the said suit reached finality and binding on the Plaintiff. When the Plaintiff is suffering under the said Judgment, he cannot file another suit under imaginary cause of action.

g) It is submitted that, the present Plaintiff – Shamsuddin filed O.S.No.105/1991 on the file of Civil Judge & JMFC, Savanur for the relief of permanent injunction against father of the Defendants



Nos 14 to 16 – Shivarudrayya & others. After recording evidence of the parties Hon'ble Civil Judge and JMFC, Savanur dismissed the suit of the plaintiff in O.S.No.105/1991 on 30/10/2003, holding that the Plaintiff failed to plead and prove the exact location of property measuring 24 gunta under Paradi No. 66/1+2 and failed to challenge the construction, license obtained by the Defendants No.1, 2, 3 & 5 in O.S.No.105/1991. The parties, schedule property, description in O.S.No.105/1991 and parties, schedule property etc., are similar in O.S.No.138/2024. Hence, subsequent suit is not maintainable and liable to be dismissed.

h) It is submitted that, while giving findings in O.S.No.105/1991 on Issue No.1 the Hon'ble Court held that the Plaintiff failed to prove his title and possession over the property, accordingly answered Issue No.1 in the negative. Further, Hon'ble Court held that the Plaintiff has not examined the Vendors of alleged 3 Sale Deed pertaining to Paradi No. 66/1+2. The property purchased by the Shivarudrayya under Paradi No.22 & 64 and TMC No.126 & 127 are entirely different from the property mentioned in the alleged Sale Deed of the Plaintiff. On this ground Hon'ble Court dismissed O.S.No.105/1991 on 30/10/2003. All these facts are suppressed by the Plaintiff.



I) It is submitted that, the plaintiff challenged the legality of Judgment and Decree passed in O.S.No.105/1991 dated 30/10/2003 before the Hon'ble District Judge / FTC, Haveri in R.A.No.128/2009 (Old R.A.No.3/2004 transferred from the Court of Senior Civil Judge to the Fast Track Court / District Court, Haveri as per order of Hon'ble PDJ. Dated: 09/09/2009). After hearing the both side Hon'ble District Court, Haveri dismissed R.A.No.128/2009 on 01/12/2011 and confirmed the Judgment and Decree passed in O.S.No.105/1991. Aggrieved by the same the Appellant preferred R.S.A.No.5034/2012 before the Hon'ble High Court of Karnataka, Dharwad Bench. When the matter came up for final hearing the Advocate for the Appellant filed Memo on 06/04/2016 seeking permission to withdraw the Appeal filed under section 100 of CPC. After hearing the parties Hon'ble High Court of Karnataka, Dharwad accepted the Memo filed by the Appellant and dismissed R.S.A.No. 5034/2012 on 11/04/2016. It seems that, the findings given by the Hon'ble Civil Judge in O.S.No.105/1991 and Judgment in R.A.No. 128/2009 dated 01/12/2011 reached finality. The parties, schedule property, facts, contention of parties in all these proceedings and parties, schedule property, contention of parties in this suit are one and



the same. Hence, the present suit is hit by section 11 of CPC and principles of constructive Res-Judicata are applicable.

j) It is submitted that, thereafter the same Plaintiff filed O.S.No. 130/2013 on the file of Civil Judge & JMFC, Savanur in respect of same property for the relief of declaration and injunction against Shivarudrayya Kalmath and others. After recording the evidence of the parties Hon'ble Civil Judge dismissed O.S.No. 130/2013 on 12/07/2023 holding that, the Plaintiff failed to prove his title & possession over the property bearing TMC No.266, paradi No.66/1+2/B measuring 24 gunta situated at Ward No. III, Block No.5 of Savanur Town. Hon'ble Court while giving finding on Issue No.2 and 3 held that the plaintiff is not in possession of the suit property. Similarly while giving finding on Additional Issue No.1 held that the subsequent suit filed for declaration and injunction is not maintainable and hit by the principles of Res-Judicata. Accordingly, after answering all Issues and after recording evidence of the parties Hon'ble Court dismissed O.S.No. 130/2013 on 12/07/2023. Aggrieved by the same the Plaintiff filed R.A.No.55/2023 before the Hon'ble Senior Civil Judge, Shiggaon Itinerary Court at Savanur. When already R.A.No.55/2023 is pending before the Senior Civil Judge Court at



Savanur, the subsequent suit for injunction is not maintainable. When already suit filed by the Plaintiff for the relief of declaration in O.S.No.130/2013 came to be dismissed the subsequent suit is not maintainable and hit by Order II Rule 2 of CPC as well as hit by the principles of Res-Judicata as per Section 11 of CPC.

k) It is submitted that, if the really there was a cause of action on 14/04/2024, he could have file an application in R.A.No. 55/2023 and not by separate suit. Only in order to gave harassment to the Defendants and to knock of the property the present suit has been filed.

l) It is submitted that, the father of the Defendants Nos 14 to 16 – Shivarudrayya purchased the property under Sale Deed dated: 30/06/1972 from its owner, the said Sale Deed is more than 52 years old and it has got own sanctity and presumption under the law about passing of title, possession etc., in favour of Shivarudrayya. In all the proceedings the Plaintiff has not challenged the legality of Sale Deed dated:30/06/1972 and he has not challenged the Sale Deed executed in favour of other Defendants. It is submitted that, the Defendant No.17 – Sangayya died prior to 1960, and it is within the knowledge of the Plaintiff. Hence, suit filed against dead persons is not maintainable.



m) It is submitted that, the Plaintiff has manipulated the alleged Sale Deed without specific boundaries and filed various suits. Only in order to knock the property the Plaintiff has created forged and fraudulent amended Sale Deed on 04/03/2013 after thought and after giving findings in O.S.No. 105/1991, O.S.No.224/1994 and R.A.No. 128/2009. Even after amendment of alleged Sale Deed dated: 04/03/2013, the Plaintiff have not pursued R.S.A.No. 5034/2012 before High Court of Karnataka, Dharwad Bench since it was dismissed as withdrawn on 11/04/2016, which shows the conduct of the plaintiff. Now the Plaintiff cannot file another suit for injunction on imaginary cause of action as it is hit by Order II Rule 2 of CPC as well as Order VII Rule 11(a) &(d) of CPC. The Plaintiff misused the provisions of law and consumed the valuable, precious time of the Court by filing vexatious, false suit.

n) When the plaintiff is not in possession of the suit property, the question of causing obstruction does not arise. When there is no cause of action, the suit is not maintainable and liable to be rejected. Therefore, this Hon'ble Court be pleased to dismiss the suit of the Plaintiff with exemplary costs of Rs 10,00,000/- in the interest of Justice and equity.

3.a) The plaintiff filed objection to the said application. He denied



the averment so the affidavit and contended that the plaintiff has purchased the Paradi / Sy.No.66/1+2 measuring 1 acre 24 guntas situated at Savanur, under different registered sale deeds and become the absolute owner. Based on the sale deeds, he is in possession of the same. Since from the date of purchase, no one has questioned the said registered sale deeds. The Hon'ble Courts in O.S.No.105/1991, O.S.No.130/2013 and R.A.No.128/2005 (128/2009), have observed and dismissed the suits on the ground that the plaintiff has not shown the boundaries of the suit properties properly, not on the ground of possession. These cases have been dismissed on the technical grounds.

b) It is contended that the property purchased under different sale deeds was one and the same property bearing Paradi No.66/1+2 and though the property was held jointly by several vendors, the plaintiff purchased the same without any partition between the vendors. Therefore, the plaintiff has acquired entire ownership right. It is further submitted that while executing some of the earlier documents, the exact boundaries were inadvertently not mentioned. Therefore, the vendors executed an Amended Sale Deed dated 04.03.2013 clearly mentioning boundaries for the extent of 24 guntas which belongs to the plaintiff absolutely. The



amended deed only clarifies the boundaries of the property already sold. Though the suit property is not related to the defendants, they are trying to engulf the said property from the plaintiff. Therefore, amongst other reasons, the plaintiff prays to reject the application with costs.

4. Heard the arguments of both the counsels and perused pleadings, materials available on court records.

5. The following points arise for my determination.

POINTS

1. Whether the IA No.III filed by the defendants no.11 to 16 is made out sufficient grounds to allow?
2. What order?

6. My answers to the above points are as here under:

Point No.1 : In the Negative.

Point No.2 : As per final order for the following;

: REASONS :

7. **POINT NO.1** :- The present application I.A.No.III has been filed by the defendant no.11 to 16 Under Order 7 rule 11 (a) and (d) R/w Sec.151 of CPC seeking for the rejection of plaint as there is no cause of action and suit is barred by law.

8. The defendants no.11 to 16 counsel heavily relied on the earlier suits filed by the present plaintiff, namely



O.S.No.105/1991, O.S.No.224/1994, O.S.No.130/2013 and the appellate proceedings thereon, to contend that the plaintiff's claim regarding title and possession has already been decided and therefore the plaint deserves to be rejected at the threshold. According to the applicants, the plaintiff has suppressed material facts and has been repeatedly filing suits over the same subject matter and therefore the plaint must be rejected to prevent abuse of process of Court. Hence they prayed to allow the application.

9. The defendant no.11 to 16 counsel relied on the following decisions;

(1) Judgment of Hon'ble High Court of Karnataka at Bengaluru, in Miscellaneous Second Appeal No.36/2020 (RO) in the case of Sri.D.C.Ravikumar S/o Late. Channrabsappa Vs. Sri Ravikumar S/o Late. Gare Ramanna. This case is pertains to rejection of plaint under Order 7 rule 11(a) and (d) of CPC, and suit is claiming the issue of adverse possession. The facts and circumstances involved in the said case are entirely different and are not applicable to the facts of the present case.

(2) Judgment of Hon'ble Supreme Court of India, in Special Leave Petition (Civil) No.2137 of 2025 in the case of Smt. Uma Devi and others Vs. Sri Anand Kumar and others, wherein the



defendant no.11 to 16 relied on that,

14. *The learned senior counsel for the defendants/appellants, Mr. Sundaram, relied upon the decision of this Court in [Shri Mukund Bhavan Trust & Ors. v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle & Anr.](#) (2024 SCC OnLine SC 3844) to substantiate the contention that the suit was barred by limitation. It was observed as follows:*

“16. When a portion of the property has been conveyed by court auction and registered in the first instance and when another portion has been conveyed by a registered sale deed in 1952, there is a constructive notice from the date of registration and the presumption under [Section 3](#) of the Transfer of Property Act, comes into operation. The possession, in the present case, also has been rested with the appellant before several decades, which operates as notice of title.

17. XXX

18. Continuing further with the plea of limitation, the Courts below have held that 23 (1977) 4 SCC 467 the question of the suit being barred by limitation can be decided at the time of trial as the question of limitation is a mixed question of law and facts. Though the question of limitation generally is mixed question of law and facts, when upon meaningful reading of the plaint, the court can come to a conclusion that under the given circumstances, after dissecting the vices of clever drafting creating an illusion of cause of action, the suit is hopelessly barred and the plaint can be rejected under Order VII Rule 11”.

15. In [Madanuri Sri Rama Chandra Murthy v.](#)



Syed Jalal (2017) 13 SCC 174, this court laid down the scope of Order 7 Rule 11 CPC:

“The plaint can be rejected under Order VII Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order VII Rule 11, CPC can be exercised by the Court at any stage of the suit.

The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order VII Rule 11, CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order VII Rule 11 of CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when, the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order VII Rule 11 of CPC can be exercised. If clever



drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage”.

Placing reliance on the above principles, the defendants contended that the present suit is a vexatious litigation and ought to be rejected at the threshold. Per contra, the plaintiff contended that the plea of res judicata cannot be examined in an application under Order VII Rule 11 CPC, as determination of such a plea necessarily requires evidence. The question of res-judicata is a mixed questions of law and fact which require determination on the basis of pleadings and evidence that may be adduced by both sides during trial.

10. On the other hand, the plaintiff counsel argued that the question of res judicata or bar under Order II Rule 2 cannot be examined in an application under Order VII Rule 11, as these grounds require consideration of pleadings, issues, and evidence in previous proceedings. It is further contended that the plaint averments disclose possession and cause of action and therefore the plaint cannot be rejected by referring to defence materials. The earlier suits and appeals were dismissed on technical grounds. A fresh cause of action give rise to file fresh suit seeking for



permanent injunction. The plaintiff contends that the objections raised by the defendants are matters for trial and not for rejection of plaint. Hence prays to reject the application.

11. To reject the plaint, only plaint averments has to be considered. Therefore this court relied on Hon'ble Apex Court decisions; **Srihari Hanumandas Totala vs Hemant Vithal Kamat and others (2021 SCC Online SC 565);**

Para 25. On perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarized as follows;

25.1. To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to.

25.2. The defense made by the defendant in the suit must not be considered while deciding the merits if the application.

25.3. To determine whether a suit is barred by res judicate, it is necessary that (I) the previous suit is decided (ii) the issued in the subsequent suit were directly and substantially in issue in the former suit (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title, and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit.



25.4. Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the previous suit, such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused.

12. Order 7 Rule 11 of Civil Procedure Code-1908, reads as follows:

11. Rejection of plaint.— The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9



Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

13. On careful observation of the arguments by both the counsels and plaint averments, the defendants no.11 to 16 has filed this application to reject the plaint under Order 7 Rule 11(a) and (d) of the Civil Procedure Code. They claims that the suit has no cause of action and it is barred by law. A plaint can be rejected if it does not disclose any valid cause of action to file the case or if the suit is clearly barred by any law. While deciding this, the court must look only the contents of the plaint, not the defence or documents produced by the defendants.

14. The settled legal position is that while considering an application under Order VII Rule 11 of CPC, the Court is required to look only to the averments made in the plaint and not the defence raised by the defendants or documents produced by them.



Therefore, the defence material placed by the defendants cannot be looked into while considering this application.

15. Upon careful reading of the plaint, it cannot be said that the plaint does not disclose any cause of action. The plaintiff has pleaded his acquisition, possession, and the alleged interference, which constitute cause of action for a suit for injunction. Whether such averments are true and whether the plaintiff is actually in possession are matters of evidence and cannot be examined at this preliminary stage. Likewise, whether the suit is hit by res judicata or barred under Order II Rule 2 are mixed questions of law and fact which require determination on the basis of pleadings and evidence that may be adduced by both sides during trial.

16. In view of the principles laid down by the Hon'ble Apex Court and having regard to the limited scope under Order VII Rule 11 CPC, I am of the considered view that the plaint, on its face, does not disclose any ground for rejection and the materials relied upon by the defendants are beyond the scope of adjudication at this stage. Therefore, from the above discussion, this Court is of the considered view that the plaint discloses a valid cause of action and does not appear to be barred by any law at this stage. Therefore the application filed by the defendants no.11 to 16 have



no merits and deserves to be rejected. Accordingly, this court answered **point No.1 in the Negative.**

17. POINT NO.2 :- In view of above said discussion and reasoning, I proceed to pass the following;

: ORDER :

I.A.No.III filed U/O 7 rule 11 (a) and (d) r/w Sec.151 of CPC, filed by the defendant no.11 to 16, is hereby rejected.

(Dictated to the Stenographer directly on computer, corrected and initialed by me and then pronounced in the open court on this day of 4th day of December 2025)

**(SRINIVASA.S.N)
Civil Judge and JMFC,
Savanur.**

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